

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LESLIE DICESARE

v.

**BJ'S RESTURANT OPERATIONS
COMPANY, INC, et al.**

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No.: 5:19-CV-00499

ORDER

AND NOW, this ____ day of _____, 2019, upon consideration of Defendants, BJ's Restaurant Operations Company (incorrectly BJ's Restaurant Operations Company, Inc.) d/b/a BJ's Restaurant and Brewhouse and Mike Neyhart Motion to Dismiss Plaintiff's Complaint, and Plaintiff, Leslie DiCesare's Response in Opposition thereto, it is hereby **ORDERED** and **DECREED** that:

- 1) This matter is remanded to JAMS for binding arbitration; and,
- 2) This matter is STAYED pending the resolution of aforementioned arbitration.

AND IT IS SO ORDERED.

HON. JOSEPH F. LEESON, JR., U.S.D.J.

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**PLAINTIFF, LESLIE DICESARE'S RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

Incorporating by reference Plaintiff's attached Memorandum of Law in Opposition to Defendants, BJ's Restaurant Operations Company (incorrectly BJ's Restaurant Operations Company, Inc.) d/b/a BJ's Restaurant and Brewhouse and Mike Neyhart Motion to Dismiss Plaintiff's Complaint, Plaintiff, Leslie DiCesare, by and through her undersigned counsel, respectfully requests this Honorable Court deny Defendants' Motion and enter Plaintiff's proposed Order.

WHEREFORE, Plaintiff, Leslie DiCesare, by and through her undersigned counsel, respectfully requests this Honorable Court deny Defendants' Motion and enter Plaintiff's proposed Order.

Respectfully submitted,

WEISBERG LAW

/s/ Matthew B. Weisberg

Matthew B. Weisberg, Esquire
L. Anthony DiJiacomo, III, Esquire

SCHAFKOPF LAW, LLC

/s/ Gary Schafkopf

Gary Schafkopf, Esquire
Attorneys for Plaintiff

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**PLAINTIFF, LESLIE DICESARE'S MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

Plaintiff, Leslie DiCesare, by and through her undersigned counsel, hereby provides her Memorandum of Law in Support of Plaintiff's Response in Opposition to Defendants, BJ's Restaurant Operations Company (incorrectly BJ's Restaurant Operations Company, Inc.) d/b/a BJ's Restaurant and Brewhouse and Mike Neyhart Motion to Dismiss Plaintiff's Complaint

I. ARGUMENT

**A. PURSUANT TO THE PENNSYLVANIA ARBITRATION ACT, THIS
MATTER SHOULD BE STAYED WHILE COMPELLED TO
ARBITRATION.**

Pursuant to the Federal Arbitration Act, this Matter should be Stayed while compelled to arbitration. *See* 9 U.S.C. § 3. Plaintiff concedes that the applicable arbitration clause is applicable to this mater. Nonetheless, Defendants improperly request this Honorable Court to dismiss this matter – out of this Honorable Court's jurisdiction – to binding, non-judicial arbitration.

Specifically, Section 3 states:

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement,

providing the applicant for the stay is not in default in proceeding with such arbitration.

See 9 U.S.C. § 3. As such, Defendants' requested relief is inappropriate. Instead, this Honorable Court should stay the matter, appropriately maintaining jurisdiction over this matter, while compelling the matter to JAMS in accordance with the applicable contract. *See* Doc. 12, Pages 26-28.

II. CONCLUSION

For the foregoing reasons, Plaintiff, Leslie DiCesare, by and through her undersigned counsel, respectfully requests this Honorable Court deny Defendants' Motion and enter Plaintiff's proposed Order.

Respectfully submitted,

WEISBERG LAW

/s/ Matthew B. Weisberg
Matthew B. Weisberg, Esquire
L. Anthony DiJiacomo, III, Esquire

SCHAFKOPF LAW, LLC

/s/ Gary Schafkopf
Gary Schafkopf, Esquire
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I, Matthew B. Weisberg, Esquire, hereby certify that on this 15th day of July, 2019, a true and correct copy of Plaintiff's Response in Opposition to Defendants' Motion to Dismiss and Plaintiff's Memorandum of Law in support thereof was served via ECF upon all counsel of record.

WEISBERG LAW

/s/ Matthew B. Weisberg
Matthew B. Weisberg, Esquire
L. Anthony DiJiacomo, III, Esquire

SCHAFKOPF LAW, LLC

/s/ Gary Schafkopf
Gary Schafkopf, Esquire
Attorneys for Plaintiff